

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
ANDERSON DIVISION

Robert Koon,)	C/A No. 8:06-2000-RBH
)	
Plaintiff,)	
)	
vs.)	
)	
Joseph C. Ubah, Lee Correctional Institution Dentist,)	O R D E R
)	
Defendant.)	
)	

Petitioner Robert Holland Koon, proceeding *pro se*, filed this action pursuant to 42 U.S.C. § 1983 on July 12, 2006 against several defendants. This Court granted the motion for summary judgment by the defendants other than defendant Ubah¹ and recommitted the case to the Magistrate Judge by order dated and filed on May 18, 2007.² Defendant Ubah has now moved for summary judgment by motion filed on August 13, 2007. By Order entered August 14, 2007, pursuant to Roseboro v. Garrison, 528 F.2d 309 (4th Cir. 1975), the Magistrate Judge advised the plaintiff of the summary judgment procedure and the possible consequences if he failed to respond adequately. Under the Roseboro Order, the plaintiff's response to the motion was due on September 17, 2007. On September 25, 2007, the Magistrate Judge filed an order indicating that the plaintiff had failed to respond to the motion; giving him until October 15, 2007 to file his response; and advising him that if he failed to respond then his action would be dismissed for failure to prosecute. Plaintiff filed an

¹ Defendant Ubah was substituted as a party after the motion for summary judgment was filed by the original defendants.

² Plaintiff's interlocutory appeal from this Court's order granting summary judgment to the other defendants was dismissed by the Fourth Circuit on October 1, 2007 for failure to prosecute.

affidavit in opposition to the motion for summary judgment on September 26, 2007. On October 22, 2007, the Magistrate Judge entered a Report and Recommendation that the plaintiff's complaint be dismissed for failure to prosecute on the basis that he had failed to respond to the motion for summary judgment.

The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight. The responsibility for making a final determination remains with this court. Mathews v. Weber, 423 U.S. 261, 270 (1976). The court is charged with making a de novo determination of any portions of the Report and Recommendation of the Magistrate Judge to which a specific objection is made. The court may accept, reject, or modify, in whole or in part, the recommendation made by the Magistrate Judge or may recommit the matter to the Magistrate Judge with instructions. 28 U.S.C. § 636(b)(1).

Since the plaintiff did in fact respond to the motion within the extended time set by the Magistrate Judge, the Court respectfully rejects the Report and Recommendation that the action be dismissed for failure to prosecute. The matter is recommitted to the Magistrate Judge for further proceedings.

The Court has reviewed the Report, objections, pleadings, memoranda, and applicable law. For the reasons stated, the Court respectfully declines to adopt the Report and Recommendation. The matter is recommitted to the Magistrate Judge for further proceedings consistent with this Order.

IT IS SO ORDERED.

s/R. Bryan Harwell
R. Bryan Harwell
United States District Judge

November 5, 2007
Florence, SC